



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Paper No.

FOLEY & LARDNER LLP
P.O. BOX 80278
SAN DIEGO, CA 92138-0278

COPY MAILED

JUL 24 2006

OFFICE OF PETITIONS

In re Application of :
Kenneth Buechler : DECISION ON PETITION
Application No. 09/613,650 :
Filed: July 11, 2000 :
Atty Docket No. 071949-1307 :

This is a decision on the PETITION UNDER 37 CFR §§ 1.181 OR 1.182 TO ACCEPT A FILING AS OF IT'S DATE OF FACSIMILE TRANSMISSION IN ACCORDANCE WITH 37 CFR §1.8 filed June 19, 2006.

On February 7, 2006, the Office mailed a non-final Office action in the above-identified application. This Office action set a three-month period for response, with extensions of time obtainable under § 1.136(a).

On June 19, 2006, applicant filed the instant petition, asserting that the response had been timely filed by facsimile transmission on Monday, May 8, 2006. In support thereof, applicant submits a copy of the response as maintained to have been timely faxed and a copy of a purported facsimile transmission confirmation.

A review of the record confirms that no response was received on May 8, 2006, as no such response is present in the image file wrapper for this application.

37 CFR 1.8(b) provides that:

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed,

terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
- (3) Includes a statement, which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

Petitioner's evidence has been considered, but not found persuasive that the response should be considered timely submitted pursuant to § 1.8(b). Effective December 1, 2003, the Office required, with few exception, that all patent application related correspondence transmitted by facsimile must be directed to the central facsimile number, (703) 872-9306. See *Centralized Delivery and Facsimile Transmission Requirements for Patent Application Related Correspondence*, 1275 OG 200 (October 28, 2003). In the Office action mailed February 7, 2006, the examiner noted the centralized facsimile number of 703-872-9306. Effective July 15, 2005, the centralized facsimile number was changed to (571) 273-8300, with all facsimile transmissions sent to the old facsimile number being forwarded to the new number. See *New Patents Central FAX Number and Updated Lists of Exceptions to the Centralized Delivery and Facsimile Transmission Policy for Patent Related Correspondence*, 1296 OG 76 (July 12, 2005).

However, applicants, according to their own evidence, faxed the response to an incorrect facsimile number, 571-273-0814. Moreover, the evidence submitted includes neither a statement from the person who transmitted the facsimile attesting to its successful transmission nor does it include a facsimile transmission confirmation. Applicant has not submitted a confirmation, but rather applicant has submitted a copy of the

facsimile transmission letter. The letter includes no indicia of successful facsimile transmission.

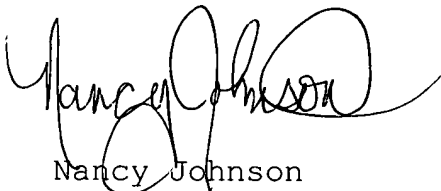
Under the circumstances, the holding of abandonment is proper and will not be withdrawn.

No fee is required on petition under § 1.181.

Nonetheless, as of the filing date of this petition, June 19, 2006, the period for reply to the Office action mailed February 7, 2006, with extensions of time continued to run. Receipt of the response on petition is acknowledged. To accept the response as timely, a petition fee for extension for response within the second month is being charged to Deposit Account No. 50-0872, as authorized.

Technology Center AU 1743 has been advised of this decision. The application is, thereby, being forwarded to the examiner for consideration of the response filed June 19, 2006.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson". The signature is fluid and cursive, with the first name "Nancy" and last name "Johnson" clearly distinguishable.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions